

THE AGUILERA LAW GROUP, APLC

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Attorneys for Plaintiff, TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA - FRESNO

TRAVELERS PROPERTY
CASUALTY COMPANY OF
AMERICA, a Connecticut Corporation

Plaintiff,

v.

S.C. ANDERSON, INC.; a California
Corporation; and DOES 1 through 10
inclusive,

Case No.:

**TRAVELERS PROPERTY
CASUALTY COMPANY OF
AMERICA'S COMPLAINT FOR:**

- 1) DECLARATORY RELIEF; AND**
- 2) EQUITABLE
REIMBURSEMENT**

Comes now Plaintiff TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA and pleads the following allegations on information and belief in
support of its complaint herein:

JURISDICTION

1
2 1. Plaintiff TRAVELERS PROPERTY CASUALTY COMPANY OF
3 AMERICA (“TRAVELERS” or “Plaintiff”) is now, and at all relevant times was, a
4 corporation, existing under the laws of the State of Connecticut, with its principal
5 place of business in Connecticut. TRAVELERS is, and at all relevant times was, an
6 insurance carrier eligible to do business as an insurer in the State of California.

7 2. Plaintiff is informed and believes and thereon alleges that Defendant
8 S.C. ANDERSON, INC. (“SCA”) is a corporation organized and existing under the
9 laws of the State of California, with its principal place of business in Bakersfield,
10 California. Plaintiff is informed and believes and thereon alleges that SCA is a
11 general contractor licensed to do business in California.

12 3. Defendants sued herein as DOES 1 through 10, inclusive, are sued herein
13 by such fictitious names because Plaintiff is unaware of the true names and capacities
14 of said DOE Defendants. Plaintiff will amend this Complaint to reflect the true
15 names when the same are ascertained. Plaintiff is informed and believes and thereon
16 alleges that said DOE Defendants are responsible for the acts, events, and
17 circumstances alleged herein, or are interested parties to this action.

18 4. This Court has original jurisdiction under 28 U.S.C. § 1332 in that it is a
19 civil action between citizens of different states in which the matter in controversy
20 exceeds, exclusive of costs and interest, seventy-five thousand dollars. The amount in
21 controversy exceeds \$600,000, and represents indemnity paid by TRAVELERS on
22 behalf of SCA in the lawsuit entitled *C.L. Knox, Inc., et al. v. S.C. Anderson, Inc., et*
23 *al.* Kern County Superior Court, Case BCV-17-100423, including consolidated cases
24 BCV-17-100439, BCV-17-100472 and BCV-19-100034 (“Underlying Action”).

VENUE

25
26 5. Plaintiff TRAVELERS is informed and believes and thereon alleges that
27 the acts and/or omissions at issue in this litigation took place in this judicial district
28 within the State of California. The Underlying Action was venued in this judicial

district. Venue, therefore, lies with this Court, as a substantial part of the events which are the subject of the claims asserted herein are located and/or took place in this judicial district.

GENERAL ALLEGATIONS

A. The Relevant Insurance Policies

6. TRAVELERS issued the following Special Commercial Umbrella Liability policies to SCA:

<u>Policy Number</u>	<u>Policy Period</u>	<u>Policy Form No.</u>
ZUP-13T07997	4/1/2014-4/1/2015	SU 00 01 02 14
ZUP-13T07997	4/1/2015-4/1/2016	
ZUP-13T07997	4/1/2016-4/1/2017	SU 00 01 02 14
ZUP-13T07997	4/1/2017-4/1/2018	SU 00 01 02 14
ZUP-13T07997	4/1/2018-4/1/2019	EU 00 01 07 16
ZUP-13T07997	4/1/2019-4/1/2020	EU 00 01 07 16
ZUP-13T07997	4/1/2020-4/1/2021	EU 00 01 07 16

The above reference policies are collectively referred to as the “Travelers Policies”.

7. The Travelers Policies contain various Commercial Umbrella Liability forms which provide, in relevant part:

Form SU 00 01 02 14

I. Coverage

A. We will pay on behalf of the **Insured** those sums in excess of the **Retained Limit** that the **Insured** becomes legally obligated to pay as damages because of:

1. **Bodily Injury or Property Damage** that occurs

during the Policy Period and is caused by an
Occurrence;

....

Form EU 00 01 07 16

SECTION I – COVERAGES

**A. COVERAGE A – EXCESS FOLLOW-FORM
LIABILITY**

1. We will pay on behalf of the insured those sums, in excess, of the “applicable underlying limit”, that the insured becomes legally obligated to pay as damages to which Coverage A of this insurance applies, provided that the “underlying insurance” would apply to such damages but for the exhaustion of its applicable limits of insurance. . . .
2. Coverage A of this insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the “underlying insurance”, except with respect to any provisions to the contrary contained in this insurance.

...

8. Under the terms of the Travelers Policies, Plaintiff has an obligation to pay those sums in excess of the Retained Limit or underlying insurance that an insured becomes legally obligated to pay as damages because of “property damage” caused by an “occurrence” during the policy period (subject to various limitations and exclusions in the Travelers Policies).

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1 **B. The Project**

2 9. On October 31, 2014, Leslie Knox (“Knox”) and SCA entered into a
3 contract for the construction of a 31,000 square foot mixed occupancy building and
4 warehouse as well as an adjacent 12,000 square foot banquet hall.

5 10. During the construction a number of problems and delays occurred, and
6 SCA was kicked off the job by Knox, who hired another general contractor to take
7 over the project.

8 **C. The Underlying Action**

9 11. Plaintiff is informed and believes and based thereon alleges that on
10 February 28, 2017, Knox filed a lawsuit against SCA alleging causes of action for:
11 (1) breach of contract; (2) negligence; and (3) declaratory relief (the “Underlying
12 Action”).

13 12. During the litigation with Knox, it became apparent to TRAVELERS
14 that a number of damages sought by Knox were not covered by the Travelers
15 Policies.

16 13. At the final mediation before trial, SCA’s primary carrier agreed to fund
17 \$2,000,000 to settle the claims against SCA. Despite this sum, SCA informed
18 TRAVELERS that it needed an additional \$673,000 to settle the matter with Knox.

19 14. TRAVELERS reviewed the indemnity payment being sought by SCA
20 and determined the \$673,000 was for damages not covered by the Travelers Policies.
21 TRAVELERS agreed to pay the \$673,000 on behalf of SCA, but reserved the right to
22 seek reimbursement of the funds because the damages were not covered by the
23 Travelers Policies.

24 **FIRST CAUSE OF ACTION FOR**

25 **DECLARATORY RELIEF**

26 **(By TRAVELERS Against Defendant SCA)**

27 15. TRAVELERS hereby re-alleges and incorporates by reference each
28 allegation contained in all preceding paragraphs of this Complaint as though fully set

1 forth herein.

2 16. The Travelers Policies provide that TRAVELERS' duty to indemnify is
3 limited to claims for "property damage" during the policy period caused by an
4 "occurrence" that is not otherwise excluded under the policies.

5 17. TRAVELERS is informed and believes Defendants disagree with
6 TRAVELERS' position.

7 18. An actual controversy exists between TRAVELERS and Defendants
8 regarding whether the indemnity payment made by TRAVELERS, at the insistence of
9 SCA, to settle the Underlying Action was for covered "property damage".

10 19. Travelers seeks a judicial declaration, order, and judgment that the
11 Travelers policies do not provide coverage for sums SCA insisted TRAVELERS pay
12 to resolve the Underlying Action. Such judicial determination is necessary and
13 proper in order that all parties are bound by the same interpretation of the Travelers
14 Policies.

15 **SECOND CAUSE OF ACTION FOR**
16 **EQUITABLE REIMBURSEMENT**

17 **(By TRAVELERS Against Defendant SCA)**

18 20. TRAVELERS hereby re-alleges and incorporates by reference each
19 allegation contained in all preceding paragraphs of this Complaint as though fully set
20 forth herein.

21 21. TRAVELERS has paid \$673,000 in indemnity in the Underlying Action.
22 TRAVELERS did not pay these sums as a volunteer. When TRAVELERS agreed to
23 participate in the indemnity of SCA, it specifically reserved its rights to seek
24 reimbursement from SCA of any indemnity related payments that TRAVELERS may
25 make that are not potentially covered under the Travelers Policies.

26 22. As a result of SCA's unjust enrichment, a quasi-contractual right of
27 reimbursement has arisen in favor of TRAVELERS in the amount paid for the
28 defense of claims not potentially covered under the Travelers Policies, plus interest.

The precise amount of reimbursement that is appropriate will be subject to proof at trial, but the current indemnity expense is \$673,000.

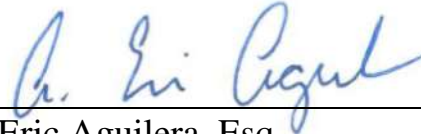
PRAYER FOR RELIEF

TRAVELERS respectfully prays for judgment, as follows:

1. For a declaration that TRAVELERS was under no obligation to contribute to the settlement of the Underlying Action and that it is entitled to reimbursement of its settlement contribution;
2. For monetary damages from SCA and DOES 1 through 10 for general damages and specific damages, in an amount subject to proof;
3. For prejudgment interest;
4. For costs of suit herein;
5. For such other and further relief as this Court deems just and proper.

Dated: November 7, 2022

THE AGUILERA LAW GROUP, APLC



A. Eric Aguilera, Esq.

Lindsee B. Falcone, Esq.

V. Rene Daly, Esq.

Attorneys for Plaintiff

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA